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Notice of Allowability	Application No.	Applicant(s)	
	10/670,048	BREWER, MICHAEL C.	
	Examiner	Art Unit	
	Charles D. Garber	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 09/23/2003.
2. ☒ The allowed claim(s) is/are 1-13.
3. ☒ The drawings filed on 23 September 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>3/05/04</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to leak test apparatus in a pipe tee that does not extend through tee opening into the pipe tubular section, classified in class 73, subclass 40.
- II. Claims 14-20, drawn to method of leak testing wherein a leak test device is left permanently in place, classified in class 73, subclass 49.8.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product may be removed after test and used in another location.

During a telephone conversation with Marvin Glazer on 1/19/2005 a provisional election was made without traverse to prosecute the invention of group I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

EXAMINER'S AMENDMENT

This application is in condition for allowance except for the presence of claims 14-20 to an invention non-elected without traverse. Accordingly, claims 14-20 have been cancelled.

Allowable Subject Matter

The following is an examiner's statement of reasons for allowance:

The closest prior art of Erhardt (US Patent 5,076,095) in figures 1-5 discloses a leak-testing device (item 10) for leak-testing a pipeline (item 1), the pipe appears in figure 1 to be a standpipe including a tee fitting 2, the tee fitting is shown having a tubular section extending between first and second opposing openings axially aligned with each other, the tee fitting including a third opening communicating with the tubular section of the tee fitting and having internal threads.

The device includes a generally circular base plate (item 14 or 32 in figures 1 and 5 respectively) having a threaded outer periphery as shown. It is also shown threadedly engaging the internal threads of the third opening of the tee fitting as in the instant invention intended use. Figure 5 item 40 a fluid passage extending centrally through item 32. Item 33 provides a wrench collar attached to the item 32 base plate and is adapted to be engaged by a wrench for tightening base plate within the third opening of the tee fitting as intended. Member 38 is shown in figure 5 to be a threaded bushing having a fluid passage (at item 39) extending centrally therethrough, the fluid passage of threaded member shown being axially aligned with, and in fluid communication with, the fluid passage of the base (item 32), the fluid passage of member 38 and the fluid passage of base (item 32) collectively forming a fluid

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channel. The member 38 with inlet coupling 39 engages a hose (column 4 line 6) to supply test fluid to the pipe. The fluid may be water as shown in figure 2. Items 52, 42, 54 provide a one-way valve disposed within fluid channel (items 40, 41, 46 as shown figure 5) admitting fluid (such as water shown in figure 2) through the fluid channel into the standpipe, while preventing fluid from escaping through the fluid channel out of the standpipe. Figure 5 also shows the device attached to the third opening of the tee fitting of the standpipe in an outline rotated such that it will not obstruct fluid within the tubular section.

However, Erhardt does not teach the device attaching to the third opening without extending into the tubular section of the tee fitting as in the instant invention.

Furthermore, one of ordinary skill in the art would not be motivated to modify the device of Erhardt such that it would not extend into the interior of the tubular section. The rotated position shown in figure 5 is merely to illustrate that the device can be rotated. Rotation is intended to allow application of pressure above or alternatively below the sealing portion 34. The sealing feature is a principal operation of the device and any modification removing it from the device would destroy its function.

Tarara (US Patent Application 2003/0037597) discloses a method and apparatus for leak testing a liquid system including plate-like cover 33 as part of a cap attaching to a tee fitting 19 shown in figure 2. The device attaches to the tee fitting without extending into or obstructing flow in the tubular section. Tarara teaches a passage within tube 37 which may be considered a bushing in the sense of the instant invention.

However, Tarara lacks several features as follows:

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1. Tarara has a hollow cylindrical portion 32 with internal threads on the cover outer periphery instead of external threading. One would not only need to replace the cylindrical portion of Tarara with external threads suggested by Erhardt but also provide a greater thickness for the cover to accommodate a reasonable number of threads. This last is not taught in the references and Examiner does not consider that one having ordinary skill in the art would make such a modification to Tarara.

2. While the tube is not threaded Examiner considers one having ordinary skill would thread a tube to provide more positive attachment with a fill hose.

3. Tarara lacks a wrench collar attached to the base. However, Erhardt teaches protrusion 16 or 33 for this purpose and one of ordinary skill would include such a protrusion to make rotating the device easier with a plumbers wrench.

4. The base has two passages 38 and 37 but neither is centrally located on the cover or base. Examiner does not consider relocation of one of the openings to the center of the plate to be a mere rearrangement of parts as Tarara appears to locate the opening to maximize separation. Further, Erhardt only teaches a central opening in figures 4 and 5 to integrate the opening with a rotating device that extends into the tubular section which the instant invention prohibits.

5. Finally, Tarara lack a check valve located within the fluid channel formed by the passage through the base, collar and bushing. Erhardt and Liao (US Patent Application 2002/0178794) teach check valves but not located as in the instant invention.

At least for the reasons given in 1, 4 and 5 above Examiner considers the instant invention is novel and not obvious in view of the prior art of record.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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CHARLES GARBER
PRIMARY EXAMINER